

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK HARRIS,

Plaintiff,

No. C 08-01810 JSW

v.

UNITED PARCEL SERVICE, INC., et al.,

**NOTICE OF QUESTIONS**

Defendants.

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE  
NOTICE OF THE FOLLOWING QUESTIONS FOR THE HEARING SCHEDULED ON  
MAY 8, 2009 AT 9:00 A.M.:

The Court has reviewed the parties' papers and, thus, does not wish to hear the parties reargue matters addressed in those pleadings. If the parties intend to rely on authorities not cited in their briefs, they are ORDERED to notify the Court and opposing counsel of these authorities reasonably in advance of the hearing and to make copies available at the hearing. If the parties submit such additional authorities, they are ORDERED to submit the citations to the authorities only, with pin cites and without argument or additional briefing. *Cf.* N.D. Civil Local Rule 7-3(d). The parties will be given the opportunity at oral argument to explain their reliance on such authority. The Court suggests that associates or of counsel attorneys who are working on this case be permitted to address some or all of the Court's questions contained herein.

The parties shall each have 15 minutes to address the following questions:

1. Although Plaintiff argues that his statutory claims should be tolled during the pendency of his grievances, pursuing a grievance may toll the statute of limitations only if the grievance gave UPS timely notice of Plaintiff's claims against it. *Addison v. Cal.*, 21 Cal. 3d 313, 319 (1978).
  - a. Plaintiff provided a request for a grievance investigation to his union. In his request, Plaintiff states that he was discriminated against based on his disability. Where in the record before the Court is there any evidence that this grievance was filed?
  - b. If there is no evidence is in the record that this particular grievance was filed, where in the record is there evidence that UPS was given notice in December 2005 of Plaintiff's contention that he was discriminated against based on his disability?
  - c. Plaintiff submits evidence that on April 4, 2006, before the one-year statute of limitations ran, the union filed a grievance on Plaintiff's behalf, protesting that he was terminated due to absenteeism when he was actually off work due to disability and medical appointments. Through this grievance, Plaintiff sought to be appointed to another occupation under seniority. (TerBeek Decl., Exs. 55, 56.) On what basis does UPS argue that such grievance did not provide UPS with the requisite notice to toll Plaintiff's FEHA claim for disability discrimination?
2. Are there any positions for which Plaintiff contends that he could have performed the essential functions that would not have required a loss of seniority? If so, specifically what positions?
3. Denise Gasti testified that Plaintiff would not have been terminated for job abandonment if UPS had had information on Plaintiff's medical status. (Declaration of Mark L. TerBeek, Ex. 48 (Deposition of Denise Gasti) at 99:4-12.) Plaintiff submits evidence that he provided to UPS a report from his doctor on November 29, 2005. Taking the evidence in the light most favorable to Plaintiff, UPS did not terminate him until December 7 or 8, 2005, after UPS had medical information regarding Plaintiff. What is UPS's best argument that such evidence does not create a question of fact precluding summary judgment on Plaintiff's claim that he was discriminated against based on his disability?
4. UPS argues that Plaintiff's reported symptoms of feeling stressed out, angry, and upset, experiencing sleep apnea and vomiting sometimes does not amount to severe emotional suffering as a matter of law. Does UPS know of any cases in which courts have found such symptoms, or comparable symptoms, did not constitute severe emotional suffering? Does Plaintiff know of any cases in which courts have found such symptoms, or comparable symptoms were sufficient to show severe emotional suffering?
5. Do the parties have anything further they wish to address?

**IT IS SO ORDERED.**

Dated: May 7, 2009

  
 JEFFREY S. WHITE  
 UNITED STATES DISTRICT JUDGE